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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 CYNTHIA ANN HERNANDEZ,
16 aka "Cynthia Roberts,"

17 Defendant.

No. CR 22-217-MCS

GOVERNMENT'S OBJECTIONS TO THE
PRESENTENCE INVESTIGATION REPORT
AND SENTENCING POSITION FOR
DEFENDANT CYNTHIA ANN HERNANDEZ;
EXHIBIT A

Hearing Date: June 26, 2023

Hearing Time: 10:00 a.m.

Location: Courtroom of the
Hon. Mark C. Scarsi

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Haoxiaohan Cai,
22 hereby files its Objections to the Presentence Investigation Report
23 ("PSR") and Sentencing Position for Defendant Cynthia Ann Hernandez.
24

25 The government's Objection and Sentencing Position is based upon
26 the attached memorandum of points and authorities, Exhibit A, a
27 Financial Disclosure Statement from Defendant, which the government
28 requests be filed under seal, the files and records in this case, and

1 such further evidence and argument as the Court may permit. The
2 government respectfully requests the opportunity to supplement its
3 position or respond to defendant as may become necessary.

4 Dated: June 12, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 MACK E. JENKINS
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
HAOXIAOHAN CAI
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Between June 2020 and August 2020, defendant Cynthia Ann Hernandez -- a former "eligibility worker" for Kern County, California -- orchestrated a lucrative scheme to defraud the California Employment Development Department ("EDD") of approximately \$515,138 of COVID-19 unemployment benefits. Defendant did so by fabricating applications for inmates who were incarcerated and clearly ineligible for any such benefits by obtaining their personal identifying information and submitting applications attesting that they were unemployed or unable to work due to a COVID-19 related reason. After EDD issued the ill-begotten benefits, defendant withdrew the benefits from ATMs and keep a portion of the proceeds. For her conduct, defendant was charged in a seven-count indictment for mail fraud, in violation of 18 U.S.C. § 1341 (Counts 1-4), access device fraud in excess of \$1,000, in violation of 18 U.S.C. § 1029(a)(5) (Count 5); and aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1) (Counts 6-7). Defendant pleaded guilty pursuant to a plea agreement to Counts one and five. (Dkt. 24.)

In its Presentence Report ("PSR"), the United States Probation Office ("USPO") calculated a total offense level of 20 and a Criminal History Category of I, which the USPO concluded results in an advisory Guidelines range of 33 to 41 months' imprisonment. (PSR ¶ 134.) The government agrees with the ultimate offense level and resulting Guidelines range but disagrees and respectfully objects to the USPO's offense level calculation in two respects. First, the government does not believe that the two-point enhancement under U.S.S.G. § 2B1.1(b)(11), for unauthorized use of a means of

1 identification of another person, applies. Second, the government
2 believes that a four, rather than two-point enhancement under
3 U.S.S.G. § 3B1.1 for aggravated role should apply.

4 The government recommends that defendant be sentenced to 37
5 months, the mid-point of the range, followed by a one-year term of
6 supervised release. The government also seeks an order of immediate
7 and full restitution of \$515,138. Such a sentence is sufficient, but
8 not greater than necessary, to achieve the purposes set forth in 18
9 U.S.C. § 3553(a).

10 **II. Background**

11 **A. Statement of Facts**

12 Defendant admitted to the following facts during the change of
13 plea hearing on January 23, 2023:

14 Between June 2020 and September 2020, defendant executed a
15 scheme to defraud the California Employment Development Department
16 ("EDD") that caused EDD and the United States Treasury a loss of
17 approximately \$515,138. (Plea Agreement ¶ 13.) Defendant, who is
18 married to an individual incarcerated at a state prison facility in
19 Corcoran, California, worked with her husband and others incarcerated
20 at various California prisons to place false applications for COVID-
21 19 related unemployment benefits, known as Unemployment Insurance,
22 ("UI") administered by the EDD. (PSR ¶ 38-39).

23 Defendant, as the non-incarcerated individual in the scheme,
24 collected inmates' personal identifying information ("PII") and then
25 filed applications with EDD stating that the inmate had a qualifying
26 occupational status and a COVID-19 related reason for being out work.
27 (Plea Agreement ¶ 13.) For example, defendant used the PII of inmate
28 M.G. and submitted an application stating that M.G. had primary

1 responsibility caring for a child or person whose school or care
2 facility was closed as a direct result of COVID-19, precluding his
3 ability to work, and that M.G. was available for full-time work in
4 his usual occupation. (Id.) As defendant knew, this was not true,
5 since M.G. was in prison. Defendant used her own email and mailing
6 address on the false applications. (PSR ¶ 27.) When EDD issued the
7 fraudulently-obtained UI benefits, defendant received Bank of America
8 debit cards at her home address, and she personally took the debit
9 cards to make withdrawals at various ATMs. (PSR ¶¶ 30-31, 36.)

10 In the span of three months, defendant submitted 29 fraudulent
11 UI applications to EDD on behalf of 29 inmates. Defendant solicited
12 inmates for the opportunity to use their PII for the scheme. (PSR
13 ¶ 39.) As one example, defendant had a conversation with one inmate
14 who stated that someone else was going to charge him half of the UI
15 benefits, and defendant interjected that was too high for the inmate
16 to be charged, and then told the inmate, "I'll do it for you." (PSR
17 ¶ 39(b).) Defendant would then keep a portion of the proceeds for
18 herself or arrange to send the UI benefits to the inmate or the
19 inmate's family. (PSR ¶ 39.)

20 Defendant knew what she was doing was wrong and tried to hide
21 her conduct. She attempted to minimize overt discussion of the
22 scheme on her recorded calls with inmates. (PSR ¶ 38(d) (stating to
23 her husband, "Well, I mean, being that it's my address being used, I
24 feel like it's more of a risk, you know."); PSR ¶ 39(h) (replying to
25 another inmate who inquired about getting "13 G's from unemployment,"
26 that "I don't really want to talk about that on here.")) Defendant's
27 phone was seized by the investigating agency, the Office of Inspector
28 General at the United States Department of Labor, who recovered

1 photos that were deleted, including photos of PII for inmates, a
2 notebook page with names and PII, and photos of the EDD Online UI
3 application process for several inmates. (PSR ¶ 35.)

4 **B. Defendant's Plea Agreement**

5 On January 23, 2023, defendant pleaded guilty pursuant to a plea
6 agreement to counts one and five, which charge her with one count of
7 mail fraud in violation of 18 U.S.C. § 1341, and access device fraud
8 in excess of \$ 1,000, in violation of 18 U.S.C. § 1029(a)(5). (Plea
9 Agreement ¶ 2(a).) The government agreed to dismiss all other counts
10 of the indictment at sentencing. (Plea Agreement ¶ 3(c).) The other
11 counts included two counts of access device fraud in violation of 18
12 U.S.C. § 1028A, which are crimes punishable by a two-year mandatory
13 consecutive sentence.

14 In exchange, defendant agreed in her plea agreement that she
15 would "not recommend, argue for, or suggest in any way that the Court
16 should impose a sentence of less than 24 months of imprisonment on
17 counts one and five of the indictment." (Plea Agreement ¶ 2(f).)

18 Defendant also agreed that she would be "required to pay full
19 restitution" to the victims of her crimes, which would be due
20 immediately upon sentencing. (Plea Agreement ¶¶ 2(i), 9.) She
21 further agreed that "the applicable amount of restitution is
22 approximately \$515,138." (Id.) She also agreed she would be
23 obligated to complete a Financial Disclosure Statement and return the
24 same to the government within 30 of her entry of her plea - i.e., no
25 later than February 23, 2023. (Plea Agreement ¶ 2(j).) She also
26 agreed to the United States Attorney's Office inspecting and copying
27 all of her financial documents and information held by the USPO.
28 (Id. ¶ 2(l).)

1 **C. Defendant Has Not Provided the Required Financial**
2 **Disclosure Statement to the USAO or Provided Any**
3 **Information on The Whereabouts of the \$515,138 She Stole**

4 Notwithstanding her agreement to complete and provide a
5 Financial Disclosure Statement to the USAO, defendant did not do so
6 by the February 23, 2023 deadline. The defense asked for additional
7 time to put together the required disclosure, and to continue the
8 sentencing date from April 2023 to June 26, 2023, which the
9 government agreed to in a stipulation. (Dkt. 29.)

10 The government received for the first time a copy of the
11 requested financial disclosure on the date of the instant filing.
12 The disclosure is attached as Exhibit A, and which the government has
13 requested be filed under seal. The defendant's financial disclosure
14 does not account for defendant's receipt of \$515,138 of fraudulent UI
15 benefits in 2020. Nor does it reflect any outflows indicating that
16 defendant no longer possesses these funds.

17 **III. SENTENCING GUIDELINES CALCULATION AND OBJECTION TO THE PSR**

18 **A. USPO's Sentencing Guidelines Calculation**

19 In the PSR, the USPO determined that defendant had a total
20 offense level of 20, based on the loss amount, acceptance of
21 responsibility, and certain other enhancements, including two
22 enhancements that the government objects to below. (PSR ¶ 67.)
23 Based on this offense level and a criminal history category of I, the
24 USPO determined that the advisory Guidelines range is 33 to 41
25 months, followed by a term of supervised release of one to three
26 years. (PSR ¶¶ 134, 137.)
27
28

1 **B. The Government's Objections to the PSR with Respect to**
2 **Offense Level Calculation**

3 The government agrees with the total offense level and
4 Guidelines range calculated by the USPO, but reaches that result on
5 the basis of different calculations. Specifically, the government
6 objects to two enhancements applied by the USPO.

7 One, the government objects to the USPO's recommendation of a
8 two-level enhancement under U.S.S.G. § 2B1.1(b)(11). (PSR ¶ 53.)
9 The enhancement applies when, among other things, the offense
10 involves "the unauthorized transfer or use of any means of
11 identification unlawfully to produce or obtain any other means of
12 identification." Id. § 2B1.1(b). Although the government agrees
13 that the defendant used the inmates' means of identification, there
14 is no present evidence that defendant's use was "unauthorized." The
15 evidence shows that defendant worked directly with the inmates who
16 appear to have consented to her use of their PII to defraud EDD. As
17 the USPO observed (PSR ¶ 54), the application note requires that the
18 defendant uses a means of identification "without that individual's
19 authorization." U.S.S.G. § 2B1.1(b)(11), Application Note 10(C)(i)
20 (emphasis added). Thus, this enhancement does not apply.

21 Second, the government objects to the USPO's recommendation of a
22 two-level enhancement for aggravated role under Section 3B1.1(c) (PSR
23 ¶¶ 58-61), because the four-level enhancement under Section 3B1.1(a)
24 should apply instead. Section 3B1.1, subsection a, provides a four-
25 level enhancement where "the defendant was an organizer or leader of
26 a criminal activity that involved five or more participants or was
27 otherwise extensive," subsection b provides a three-level enhancement
28 if the defendant was a manager or supervisor of, and subsection c

1 provides a two-level enhancement if the defendant was an organizer,
2 leader, manager, or supervisor in a crime other than and subsections
3 a or b. The USPO recognized that defendant "was acting as an
4 organizer or leader of the criminal scheme," and had "devised the
5 plan to perpetuate the crime in the first place." (PSR ¶ 61.)
6 However, the USPO applied the two-level enhancement because it found
7 it "unclear as to how many criminal participants there were involved
8 in the scheme." (Id.) The USPO also noted that "[a]ccording to the
9 case agent, it is unclear how many participants there were in the
10 scheme altogether." (PSR ¶ 23, n.1.)

11 The government believes that the four-level enhancement applies
12 both because the criminal activity involved at least 30 people
13 (defendant and the 29 inmates for whom she applied for UI benefits)
14 and because it is otherwise extensive. Defendant worked with at
15 least 29 inmates, or co-schemers for whom she applied for UI benefits
16 and withdrew money. (PSR ¶ 13.) The USPO's uncertainty about the
17 total number of individuals involved seems to stem from a
18 misunderstanding of the case agent's comments, which indicate that
19 the defendant agreed that there were a minimum of 29 confirmed co-
20 schemers, but that number may be under-representative of other co-
21 schemers unknown to the investigating agency.

22 Based on the above, defendant should have a total offense level
23 of 20 and a criminal history category of I, resulting in a Guidelines
24 imprisonment range of 33 to 41 months.

25 **C. USPO's Assessment of Defendant's Ability To Pay And**
26 **Recommendation on Restitution and Fine**

27 As of the date of the original PSR, defendant did not provide
28 required financial disclosures to the USPO, nor did she provide

1 supporting documents besides several years of tax returns, which
2 showed an adjusted gross income of approximately \$20,000 in 2019, an
3 adjusted gross income of \$3,500 in 2020, an adjusted gross income of
4 \$36,254 in 2021, and an adjusted gross income of \$3,194 in 2022. (PSR
5 ¶¶ 125-26 "Hernandez's financial condition is unknown to the
6 Probation Officer, as she did not return the required financial
7 disclosures nor provide supporting documentation to the Probation
8 Officer.") On the basis of this limited information, the USPO
9 concluded that defendant has no immediate ability to pay and
10 recommended a payment schedule consisting of nominal payments. (PSR
11 ¶¶ 131-132.)

12
13 The information in defendant's tax returns as recounted by the
14 USPO does not account for the \$515,138 that defendant received as
15 part of the fraudulent scheme. Defendant's tax returns are likely
16 unrepresentative of her true financial state: the tax returns for
17 2020 disclose only \$3,500 in adjusted gross income, which is far
18 short of the hundreds of thousands of dollars in fraudulent UI
19 benefits that defendant withdrew from Bank of America ATMS that year.
20 Nor do they show how or if defendant ever divested herself of her
21 criminal earnings.
22

23
24 **D. The Government's Objections to the PSR with Respect to
Restitution And Ability To Pay**

25 As discussed supra, USPO's conclusion regarding defendant's
26 ability to pay, and its restitution recommendation, is based on
27 defendant's failure to timely provide the financial affidavit
28 required by statute, as well as her failure to provide an accurate

1 accounting of her criminal proceeds -- which must be presumed to
2 still be in defendant's possession unless proven otherwise by
3 defendant.

4 Accordingly, as defendant has failed to provide evidence to the
5 contrary, the government objects and contends that defendant is
6 presumed in possession of the \$515,138 in criminal proceeds and has
7 present ability to pay.¹

8 **IV. SENTENCING RECOMMENDATION**

9 The government recommends that the Court sentence defendant to
10 37 months' imprisonment, i.e., a mid-range sentence, followed by a
11 three-year period of supervised release; and a \$200 special
12 assessment.² (PSR ¶¶ 130). The government further requests the
13 court order full and immediate restitution of the loss amount,
14 \$515,138. Such a sentence is sufficient, but not greater than
15 necessary, to achieve the purposes set forth in 18 U.S.C. § 3553(a).

16 **A. Nature and Circumstances of the Offense**

17 The nature and circumstances of defendant's offense supports a
18 sentence of 37 months' imprisonment. 18 U.S.C. § 3553(a)(1).
19 Defendant orchestrated a sophisticated scheme that deprived the state
20 of over five hundred thousand dollars meant to provide relief for
21 vulnerable taxpayers who were unable to work due to the COVID-19

22
23 ¹ It is the government's understanding that the USPO may make
24 additional recommendations regarding the defendant's ability to pay
25 in a amended PSR, which will be filed subsequent to the deadline on
26 the government's sentencing position. The government reserves the
right to submit an additional filing to address or respond to any
issues raised by the amended PSR.

27 ² At this time, defendant has not provided a clear picture of
28 her financial status for the government to take a position on the
imposition of a fine. At sentencing, the government reserves the
right to request a fine be imposed in accordance with 18 U.S.C.
§ 3571(b).

1 pandemic. She did so by applying for UI benefits for people who were
2 plainly ineligible, and did so for her own financial gain.

3 **B. History and Characteristics of Defendant**

4 Defendant's history and characteristics also warrant the mid-
5 range sentence. See 18 U.S.C. § 3553(a)(1). Defendant committed a
6 serious fraud, for profit, and attempted to avoid detection by asking
7 her co-schemers not to talk openly about the fraud on jail calls and
8 by deleting documents from her phone associated with the fraudulent
9 UI benefits applications.

10 More troublingly, the PSR reports that in 2019, the year before
11 her criminal conduct, defendant worked as an "eligibility worker" for
12 Kern County. (PSR ¶ 121.) Eligibility workers are responsible for
13 verifying and evaluating information from applicants regarding
14 eligibility for public assistance programs.³ There is no question
15 that defendant understood the requirements for COVID-19 UI benefits,
16 and it appears she was able to leverage her past work as an
17 eligibility worker into a scheme to monetize UI benefits for plainly
18 ineligible persons. Moreover, defendant admitted to preparing taxes
19 for others even though she has no license to do so. (PSR ¶ 117.)

20 Given the severity of defendant's conduct, a mid-range sentence
21 is appropriate.

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25
26 ³ See [https://itsapps.kerncounty.com/Iframed/CMS/ExHelpTempEmployment/Webjo](https://itsapps.kerncounty.com/Iframed/CMS/ExHelpTempEmployment/Webjobs/JS8038.pdf)
27 [bs/JS8038.pdf](https://itsapps.kerncounty.com/Iframed/CMS/ExHelpTempEmployment/Webjobs/JS8038.pdf) (specifying that someone with the position will
28 "[l]earn[] and appl[y] techniques and methods of interactive
interviewing and fact gathering to obtain, verify and evaluate
information from applicants and recipients regarding initial and
continuing eligibility for public assistance programs.")

C. Need for the Sentence to Reflect the Offenses' Seriousness, Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence, and Protect the Public

The sentence must satisfy the need to punish defendant, as well as society's need to reflect the seriousness of the offense; promote respect for the law; provide just punishment; afford adequate deterrence; and protect the public. 18 U.S.C. § 3553(a)(2). Here, the government's recommended sentence will provide deterrence both to defendant and to others who might otherwise be inclined to perpetrate a similar crime. A sentence within the Guidelines range promotes respect for the law. Finally, a term of supervised release following imprisonment will provide an additional layer of deterrence and protection to the community.

D. Need to Avoid Unwarranted Disparities

A mid-range Guidelines sentence minimizes sentencing disparities among similarly situated defendants. As the Ninth Circuit has repeatedly held, a sentence within the correctly-calculated Guidelines range ensures consistency in sentencing. See United States v. Treadwell, 593 F.3d 990, 1011 (9th Cir. 2010) ("Because the Guidelines range was correctly calculated, the district court was entitled to rely on the Guidelines range in determining that there was no 'unwarranted disparity'"); Gall v. United States, 552 U.S. 38, 54 (2007) ("[A]voidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges."). Here, under the correctly calculated Guidelines range, other defendants "with similar records who have been found guilty of similar conduct" as defendant can expect a prison sentence between 33 and 41 months' imprisonment. See U.S.S.G. § 5A (Sentencing Table). As such, the government's recommended

1 sentence, which is at the middle of that range, avoids an unwarranted
2 disparity with similarly situated defendants.

3 **V. ORDER FOR IMMEDIATE PAYMENT OF RESTITUTION**

4 The government further requests the court order full and
5 immediate restitution of the loss amount, \$515,138, payable to the
6 victim institution, EDD, and to issue an order including provisions
7 described in subsection (D), infra, regarding restitution.

8 Immediate payment of restitution is the rule, and the Court may
9 specify a restitution payment schedule for ongoing, periodic payments
10 if the defendant bears her burden of demonstrating an inability to
11 pay. Because defendant has not attempted to meet her burden, the
12 government requests an order for full and immediate restitution.

13 **A. Payment of Restitution is the Law**

14 Under the Mandatory Victim Restitution Act ("MVRA"), Section
15 3663A, the Court must order full restitution without regard to
16 defendant's economic situation. 18 U.S.C. § 3664(f)(1)(A).

17 Here, defendant was convicted of wire fraud, which is an offense
18 against property under Title 18 for purposes of § 3663A. See 18
19 U.S.C. § 3663A(c)(1)(A)(ii), see also United States v. Stouffer, 986
20 F.2d 916, 928 (5th Cir. 1993). Therefore, pursuant to 18 U.S.C. §
21 3663A, the government requests that the Court order that defendant
22 pay the following restitution amount to the following victim:
23

24 Victim	Address	Restitution Amount
25 California's 26 Employment 27 Development Department	EDD Cashiering, Benefit Recovery State of California P.O. Box 82606 Sacramento, CA 94206-0001	\$515,138

1 The government has determined this victim and loss amount from
 2 bank records, EDD records, and defendant's admissions in the plea
 3 agreement. (Plea Agreement ¶¶ 9, 13.)

4 **B. The Defendant Has Not Proven An Inability To Pay And Should**
 5 **Be Required To Make A Full and Immediate Payment**

6 1. The MVRA Requires Full and Immediate Restitution
 7 Unless the Defendant Bears the Burden of Showing
 8 Inability to Pay

9 Under the MVRA, the Court must order full and immediate payment
 10 of restitution, unless, in the interest of justice, the Court
 11 provides for payment on a date certain or in installments. See 18
 12 U.S.C. § 3572(d)(1). In setting the amount and manner of
 13 restitution, the court must consider "the amount of loss sustained by
 14 any victim as a result of the offense, the financial resources of the
 15 defendant, the financial needs and earning ability of the defendant
 16 and the defendant's dependents, and such other factors as the court
 17 deems appropriate." 18 U.S.C. § 3664(a).

18 "Immediate payment of restitution is the general rule." See
 19 United States v. Martin, 278 F.3d 988, 1006 (9th Cir. 2002).

20 Although "immediate repayment is the rule," the defendant may be
 21 permitted to make periodic payments if she bears her burden and
 22 proves inability to pay. United States v. Ross, 310 Fed. Appx. 160,
 23 162 (9th Cir. 2009); see also United States v. Reaume, 338 F.3d 577,
 24 585 (6th Cir. 2003) ("The burden is on the defendant to demonstrate
 25 that a restitution order far exceeds his resources and earning
 26 potential.")
 27

28 Defendant has not proven inability to pay she has not accounted

1 for the \$515,138 in criminal proceeds, which must be presumed to
2 still remain in her possession; and she has agreed to immediate
3 payment of restitution in the plea. As a result, the Court should
4 order immediate and full restitution.

5
6 2. Defendant Is Presumed To Be In Possession of Her
Criminal Proceeds

7 Where, as here, defendant has not accounted for the whereabouts
8 of her criminal proceeds, it must be presumed that she still
9 possesses those proceeds. United States v. Boyle, 10 F.3d 485, 492
10 (7th Cir. 1993) (upholding \$2 million restitution order because the
11 defendant failed to account for the proceeds of his crime); United
12 States v. Voight, 89 F.3d 1050, 1092 (3rd Cir. 1996) (where "a
13 defendant has secreted proceeds from an illegal activity, the illegal
14 proceeds are presumed assets of the defendant unless the defendant
15 proves otherwise."); see also United States v. Olson, 104 F.3d 1234,
16 1238 (10th Cir. 1997). Here, defendant has admitted she caused
17 losses in the amount of \$515,138, and that she was the one who
18 withdrew the fraudulently-obtained UI benefits from ATMs. (PSR
19 ¶ 13). Defendant has not provided any information on the whereabouts
20 of the nearly half million dollars of criminal proceeds, the Court
21 should deem those proceeds to remain among defendant's assets.
22
23

24 Moreover, what little information defendant did provide to the
25 USPO indicates she may have undisclosed assets. For one, defendant
26 indicated that her attorney is retained, and that she is paying her
27 attorney's fees. (PSR ¶ 128.) For another, defendant indicated she
28

1 has "special skills with taxes, beauty services," and "has her body
2 sculpting certification," (PSR ¶¶ 117-118), however, she has not
3 provided any information on what if any proceeds she receives from
4 any related endeavors.

5 The Court should order immediate payment of restitution in full.

6
7 **C. If the Defendant Demonstrates an Inability to Pay, The
8 Court Should Set a Payment Schedule**

9 If the Court determines that defendant is unable to make
10 immediate payment of restitution in full immediately, this Court
11 should order the restitution "due and payable immediately" and set a
12 payment schedule for the restitution as the Court deems appropriate.
13 United States v. Gunning, 339 F.3d 948 (9th Cir. 2003); 18 U.S.C. §
14 3664(f)(1)-(3).

15 To order a payment schedule, the Court must first find that
16 delaying immediate and full payment be "in the interest of justice."
17 18 U.S.C. § 3572(d). The Court must also "provide[] for payment on a
18 date certain or in installments," and set "the length of time over
19 which scheduled payments will be made . . . [to be] the shortest time
20 in which full payment can reasonably be made." Id. The Court may
21 direct the defendant make nominal periodic payments if the court
22 finds "from facts on the record that the economic circumstances of
23 the defendant do not allow the payment of any amount of a restitution
24 order, and do not allow for the payment of the full amount of a
25 restitution order in the foreseeable future under any reasonable
26 schedule of payments." 18 U.S.C. § 3664(f)(3)(B).
27
28

1 To be sure, the existence of a payment schedule does not
2 preclude the government from pursuing other avenues of ensuring that
3 defendant's restitution obligation is satisfied. See United States
4 v. Wycoff, 839 F.3d 581, 582 (7th Cir.2016); United States v.
5 Hawkins, 392 F. Supp. 2d 757, 760 (W.D. Va. 2005); United States v.
6 James, 312 F. Supp. 2d 802, 806-07 (E.D. Va. 2004). The entry of
7 judgment constitutes a lien in favor of the United States on all
8 property and rights to property of Defendant which the government may
9 enforce through garnishment and all other legally available means.
10 See 18 U.S.C. § 3613(a), (c) and (f).

12 **D. Government Request for Restitution Order**

13 To ensure the enforcement of the mandatory restitution order, as
14 well as all of defendant's Court-ordered financial obligations, the
15 government respectfully requests that the Court order the following:
16

- 17 1) The defendant shall notify the Court of any material change in
18 defendant's ability to pay, including without limitation any
19 increases in wages, income, or assets. See 18 U.S.C. § 3664(k)
- 20 2) The defendant shall apply all monies received from income tax
21 refunds to the outstanding Court-ordered financial obligation.
22 In addition, the defendant shall apply all monies received from
23 lottery winnings, inheritance, judgments and any anticipated or
24 unexpected financial gains to the outstanding Court-ordered
25 financial obligation.
26
- 27 3) Defendant's criminal restitution debt will be referred to the
28 Treasury Offset Program through the procedures set forth in 31

1 U.S.C. § § 3720A and 31 U.S.C. 3716 to offset funds otherwise
2 payable to the defendant from any federal agency, including the
3 Internal Revenue Service and the Social Security Administration,
4 to apply those funds to defendant's outstanding fine or
5 restitution balance until defendant's liability to pay any fine
6 or restitution order has expired or been satisfied.

7
8 4) The defendant shall notify the Financial Litigation Section of
9 the United States Attorney's Office for the Central District of
10 California before transferring any interest in the 2018
11 Chevrolet Crew Pickup Truck identified in PSR ¶ 127, as well as
12 any property, real or valued over \$1,000, owned directly or
13 indirectly by defendant, including any interest held or owned
14 under any other name or entity, including trusts, partnership
15 and/or corporations.

16
17 5) The United States Probation Office shall preserve and provide
18 the Financial Litigation Section of the United States Attorney's
19 Office for the Central District of California with all the
20 financial documentation relied upon in the preparation of the
21 Presentence Report, including any net worth and cash flow
22 statements completed by the defendant.

23 **VI. CONCLUSION**

24 For the foregoing reasons, the government respectfully requests
25 that this Court sentence defendant to 37 months' imprisonment,
26 followed by a three-year period of supervised release; and a \$200
27 special assessment. The government also requests a restitution order
28

1 for full and immediate payment of \$515,138 to the victim, EDD, which
2 includes the provisions described supra in Section V(D), or, in the
3 alternative, a payment schedule for restitution in the amount of
4 \$515,138 at the court's determination.